

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

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LINDA IBARRA, Individually and as  
Personal Representative of the Estate of  
Michael Spencer Wiltsie, deceased,

CASE NO:  
JUDGE:

CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

Plaintiff,

5:01-CV-236-OC-10 GRT

v.

ECKERD YOUTH ALTERNATIVES, INC.  
and JOSEPH COOLEY,

Defendants.

COMPLAINT

Plaintiff, LINDA IBARRA, Individually and as Personal Representative of the Estate of Michael Spencer Wiltsie, deceased, sues Defendants, ECKERD YOUTH ALTERNATIVES, INC., and JOSEPH COOLEY, and states as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to the Court's federal question jurisdiction, under 28 U.S.C. §§ 1331 & 1343(a)(4) and for an amount in excess of \$10,000,000 in damages.

2. This is an action is brought pursuant to 42 U.S.C. §§ 1983 & 1988, of the Civil Rights Act, and pursuant to the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America, which require due process and prohibits the cruel and unusual punishment of those persons serving judicial punishment ordered by an appropriate governmental authority.

**PARTIES/PARTICIPANTS**

3. Plaintiff, Linda Ibarra (“Ibarra”), is a citizen and resident of the State of Florida, residing in Marion County.

4. Ibarra, who was born on January 15, 1969, is the duly appointed and acting Personal Representative of the Estate of Michael Spencer Wiltsie, deceased (“decendent” or “Michael”).

5. Ibarra brings this action (a) for herself, as surviving natural mother of the decedent, (b) for the benefit of the decedent’s natural father, William A. Wiltsie, Jr., born December 7, 1967, (c) for the benefit of the decedent’s natural brothers, Brian Wiltsie, born July 27, 1989, and Lorenzo Ibarra, born June 6, 1998, and (d) for the benefit of the decedent’s estate.

6. Defendant, Eckerd Youth Alternatives, Inc. (“Eckerd”), is a Florida corporation which operated Camp E-Kel-Etu in Marion County, Florida. Eckerd is authorized to conduct business in the State of Florida and is engaged in the establishment, organization, management, provision, implementation, and supervision of camp activities, education programs and therapeutic programs for children in attendance. This camp is operated as an in-residence facility for juvenile offenders referred to it by the courts as part the sentencing process for convicted juvenile offenders.

7. Defendant, Joseph Cooley, was a resident of Marion County, Florida, at the time of the subject incident. At all material times, Cooley was a member of the staff, employed as a counselor, at Camp-E-Kel-Etu.

8. At all material times hereto, Defendant Eckerd, and Cooley, through his employment with Eckerd, exercised a public function pursuant to Eckerd's contract with the State of Florida Department of Juvenile Justice (DJJ).

**PRELIMINARY ALLEGATIONS**

9. In November 1999, Michael was 12 years of age and on probation in connection with convictions on various charges.

10. In November 1999, Michael was charged with violation of probation. By Order dated November 29, 1999, the Circuit Court for Marion County, Florida adjudicated Michael guilty of violation of probation and declared him a juvenile delinquent.

11. As part of Michael's sentencing, the Court ordered Michael to a level 6 medium risk residential program for an indefinite period, but no longer than the maximum sentence allowed by law or the child's 19<sup>th</sup> birthday.

12. The DJJ then made the decision to place Michael at Eckerd's Camp E-Kel-Etu, in Silver Springs, Florida, located in Marion County.

13. In January 2000, Eckerd accepted Michael for placement as a "camper" at Camp E-Kel-Etu, pursuant to direction of the Court that Michael be placed in this type of controlled environment for violation of probation.

14. By accepting Michael's placement at Camp E-Kel-Etu, Eckerd accepted custody, control, and responsibility for his health, care, safety, and welfare.

15. At all material times, Michael attended the Eckerd camp E-Kel-Etu.

16. The counselors, teachers, therapists, and other staff members of the Eckerd camp each were responsible for Michael's safety, health, welfare, and for supervision of all of the juveniles in attendance, including Michael.

17. The counselors, teachers, therapists, and other staff members of the Eckerd camp were at all material times agents and/or employees of Eckerd, acting in the course and scope of their employment and/or agency.

18. In June 1997, long prior to Michael's placement with Eckerd, he was diagnosed with Attention Deficit Hyperactivity Disorder, a diagnosed mental disorder.

19. In August 1997, Michael was also diagnosed with Oppositional Defiant Disorder, a diagnosed mental disorder.

20. As a result of these diagnoses, Michael was prescribed medication to be taken on a daily basis, including Ritalin and Clondine.

21. These medications were fundamental to maintaining Michael's emotional control and well-being.

22. Eckerd employees advised Ibarra, as the lawful legal guardian of Michael, that Camp E-Kel-Etu refused referral campers who were on psychotropic medication, therefore she would have to get him taken off of his regular medications by his physician as a condition precedent to Michael's placement and admission into Camp E-Kel-Etu.

23. This advise was contrary to and in violation of the contract effective during the time Michael was in custody of Eckerd between Eckerd (DJJ Contract #P7048) and the DJJ in which Eckerd was paid \$6,637,248 to care for 236 youths for one year. That contract included a requirement called Behavioral Health Overlay Services (BHOS) that had been in place since October 1998 as follows:

“The provider (Eckerd) shall ensure access to necessary and appropriate mental health and/or substance abuse treatment services to youth in need of such services. Mental health and substance abuse treatment of diagnosable disorders is separate from and is in addition to, habilitative programming provided as treatment for delinquency. Specific psychotherapeutic interventions provided by qualified mental health or substance abuse professional in response to a diagnosed mental disorder or substance abuse related disorder are behavioral health services.

24. Under the BHOS provision, Eckerd could be paid additional funds by Medicaid on a fee for services basis for treatment provided to Michael.

25. Eckerd did have a camp facility that accepted referrals that required psychotropic medication, but it failed to advise Ibarra of the availability of the other camp facility.

26. In this regard, Eckerd had previously organized, implemented, enforced, and supervised a policy by which campers would not be accepted on psychotropic medication, and which further prohibited campers from taking psychotropic medications while at camp.

27. Believing that it was necessary to comply with the Court’s sentence and the Department’s assignment of Michael to Camp E-Kel-Etu, Ibarra made arrangements with Michael’s doctor to take Michael off Ritalin and his other medications.

28. Eckerd knew of Michael’s diagnosed mental disorders, and qualified him for additional Medicare payment under BHOS for treating these disorders, but then refused to provide the services for which they were paid, namely to supervise and manage his

diagnosed mental condition by appropriate medical intervention. In fact, by instructing Michael's mom to take him off his medication before entry to its facility, Eckerd violated its obligation to provide essential medical services to Michael, and then once enrolled, further failed to provide essential services to Michael.

29. Specifically, Eckerd knew or should have known that Michael would be prone to behavioral effects of being removed "cold turkey" from his psychotropic medications.

30. Michael did in fact have behavioral problems while at Eckerd's facility between January 19, 2000 and February 4, 2000, but no therapeutic intervention services were provided to Michael.

31. This withholding of essential medical treatment put Michael at risk of provoking other campers and counselors due to his known inability to control his own behavior without medical intervention including the risk of being restrained as a consequence of his inability to control his behavior.

32. Prior to the acceptance of Michael's referral as a camper at Camp E-Kel-Etu, Eckerd organized, implemented, enforced, and supervised a policy relating to the physical restraints of juveniles referred to its camps pursuant to order of judicial authorities of the State of Florida.

33. Such restraint techniques were approved to be applied solely as a last resort to control the behavior of a camper under situations in which the camper poses a substantial threat or risk of harm to either another person, himself or camp property.

34. Instead of utilizing restraint techniques approved by the Department of Juvenile Justice, Eckerd implemented a policy or practice for its personnel to utilize a

different, more dangerous restraint technique, whereby a single employee of Eckerd would restrain the camper by placing his or her weight on the camper, after forcing the camper to the ground, thereby restricting the camper's movements.

35. Eckerd never obtained approval from the Department of Juvenile Justice or any state department or agency to use this different, more dangerous technique.

36. Furthermore, for at least one year prior to Michael's admission to Camp E-Kel-Etu, Eckerd counselors regularly restrained campers using improper restraint techniques, putting its campers at risk of serious bodily injury. However, Eckerd managers and supervisors failed to take corrective action in connection with these dangerous restraint techniques, thereby creating a de facto acceptance of these procedures as a practice of Eckerd.

37. At all material times, Defendants were both responsible for the establishment, organization, provision, management, supervision, performance, and implementation of all forms of therapy, counseling, and health care for the juveniles residing in its facilities as campers.

38. After Michael's referral to Camp E-Kel-Etu was accepted, Cooley was assigned as his primary counselor, mentor, and/or teacher. As such, he was directly responsible for Michael's health, safety, and welfare.

39. At all material times, Cooley weighed in excess of 300 pounds. By various accounts, Cooley weighed up to 320 or 350 pounds. Michael weighed approximately 65 at all material times to this action.

40. On February 4, 2000, Cooley made the decision to physically restrain Michael in a wooded area within the confines of Camp E-Kel-Etu despite the fact that

Michael did not pose a substantial threat or risk of harm to either another person, himself or camp property.

41. Cooley took Michael down to the ground harshly and violently.

42. In doing so, Cooley forced Michael to the ground in a face down position for at least twenty (20) minutes.

43. While on the ground, Cooley straddled the decedent and placed his full weight upon the Michael's body so as to pin his entire body, including his head, face and chest to the ground.

44. Cooley held Michael's face down in dirt, sand and leaves, and laid on his comparatively miniscule body such that Michael's air passageway was obstructed and his lungs were not able to function.

45. During the restraint Michael repeatedly complained of being unable to breathe.

46. Michael struggled and begged Cooley to get off of him.

47. Cooley, however, ignored Michael's cries for help, refusing to get off of Michael's body.

48. After many minutes passed, Michael's body became still while the full weight of Cooley's body remained on his.

49. Cooley and another Eckerd employee, Joe Acton, attempted to resuscitate Michael, however they were unable to properly perform CPR due to improper and inadequate training and supervision.



50. Acton ran to get help and notified an Eckerd manager of the situation, yet no Eckerd employee called 911 emergency rescue until nearly 25 minutes after Michael became unresponsive had elapsed, depriving Michael any chance of survival.

51. Michael suffered serious injuries as a result of the restraint, including respiratory distress, oxygen deficiency, respiratory failure, cardiac failure and compressional suffocation, ultimately resulting in death.

52. At all material times hereto, Cooley was required to and did act pursuant to the policies, practices and procedures of Eckerd, notwithstanding the fact that execution of his duties may have deviated from said policies, practices and procedures.

53. Defendants were acting as private parties under color of state law pursuant to the contract of Eckerd with an agency of the State of Florida to provide juvenile detention services in a private prison type setting referred to by Eckerd as “camps”.

54. Defendants’ actions were accomplished under color of state law and subjected and caused Michael to be deprived of his rights, privileges or immunities secured to him by the 5<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendments to the Constitution of the United States of America.

55. Camp E-Kel-Etu constituted a private jail under applicable law.

56. Defendants were deliberately indifferent to Michael’s needs for psychotropic medication, the deprivation of which would, under these circumstances, foreseeably lead to erratic behavior that would place Michael and others at risk of great bodily harm.

57. Defendants were further aware and on notice of Michael’s need for his previously prescribed psychotropic medication because Michael’s behavior prior to the

date of his death and the incident described herein was erratic. In fact Cooley restrained Michael on a previous occasion due to this erratic behavior.

58. Eckerd was further aware and on notice of Michael's need for his previously prescribed psychotropic medication because Eckerd was in possession of Michael's medical records, including doctors notes, advising of the need for medication in order for Michael to control his impulses and emotions.

59. Eckerd had an obligation to provide medical treatment to Michael once it knew or should have known that Michael was not able to control his impulses and emotions thereby placing himself and others at substantial risk of bodily harm.

60. Eckerd failed to make proper provision for Michael's care and placement given his need for psychotropic medications.

61. Defendants were deliberately indifferent to Michael's medical need of his prescribed psychotropic medications.

62. Defendants were deliberately indifferent to Michael's needs for room to breathe while being restrained by Cooley.

63. Defendants were deliberately indifferent to Michael's cries for help because he could not breathe.

64. Eckerd failed to promulgate, train and enforce the use of proper restraint procedures, and/or the termination of use of improper restraint procedures.

65. Eckerd's own procedure number 9.01 on "discipline and control", dated December 31, 1998, defines and proscribes cruel and unusual punishment including the following:

- \* Any type of physical hitting or any type of physical punishment inflicted in any manner upon the body (IIIA1).
- \* Requiring or forcing a client to take an uncomfortable position ... when used solely as a means of punishment (IIIA3).
- \* Requiring the client to remain silent for long periods of time (IIIA9).
- \* Coercing, physically or emotionally, a client to participate in an activity against his or her will (IIIA13).
- \* Imposing of unusual treatment ... of any kind on an unwilling client (IIIA14).

66. The actions of Cooley, for which Eckerd is also responsible, constituted cruel and unusual punishment under Eckerd's own definitions and also in violation of the Eighth Amendment to the Constitution of the United States of America.

**COUNT I**  
**(Civil Rights; Deliberate Indifference Re Improper Use Of Restraints)**

67. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-66, inclusive, as if fully set forth herein.

68. As a result of the foregoing conduct, Defendants' acts violated Michael's civil rights in violation of The Civil Rights Act, 42 U.S.C. § 1983, in that they were deliberately indifferent to Michael's need to be able to breathe and his cries for help while being restrained by Cooley, thereby endangering Michael's health and well-being.

69. Defendants were also deliberately indifferent to the use of improper and unapproved restraint techniques which increased the risk of injury and/or death to the

juveniles, including Michael, who were entrusted to Defendants' care, thereby endangering Michael's health and well-being.

70. Eckerd was also deliberately indifferent to the proper training and supervision of its personnel in the use of restraint techniques, thereby endangering Michael's health and well-being.

71. As a direct and proximate cause of the foregoing, Defendants caused Michael to be deprived of his civil rights, caused him great pain and suffering and, ultimately, caused his death.

72. The aforesaid acts were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with callous indifference to the health, safety, and civil rights of Michael, by reason of which Ibarra is entitled to an award of punitive damages.

73. Pursuant to 42 U.S.C. § 1988, Ibarra is entitled to recovery of attorney fees and costs.

WHEREFORE, Plaintiff, LINDA IBARRA, demands Judgment against Defendants, ECKERD YOUTH ALTERNATIVES, INC. and JOSEPH COOLEY, for compensatory and punitive damages, costs, a reasonable attorneys fee, and any other relief which the Court determines is appropriate.

**COUNT II**  
**(Civil Rights; Deliberate Indifference Re**  
**Failure To Provide Psychotropic Medications)**

74. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1-66, inclusive, as if fully set forth herein.

75. As a result of the foregoing conduct, Defendants' acts violated Michael's civil rights in violation of The Civil Rights Act, 42 U.S.C. § 1983, in that they were deliberately indifferent to Michael's need for psychotropic medications thereby endangering Michael's health and well-being.

76. As a direct and proximate cause of the foregoing, Defendants caused Michael to be deprived of his civil rights, caused him great pain and suffering and, ultimately, caused his death.

77. The aforesaid acts were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with callous indifference to the health, safety, and civil rights of Michael, by reason of which Ibarra is entitled to an award of punitive damages.

78. Pursuant to 42 U.S.C. § 1988, Ibarra is entitled to recovery of attorney fees and costs.

WHEREFORE, Plaintiff, LINDA IBARRA, demands Judgment against Defendants, ECKERD YOUTH ALTERNATIVES, INC. and JOSEPH COOLEY, for compensatory and punitive damages, costs, a reasonable attorneys fee, and any other relief which the Court determines is appropriate.

**COUNT III**  
**(Civil Rights; Cruel & Unusual Punishment Re Improper Use Of Restraints)**

79. Ibarra hereby incorporates by reference the allegations contained in paragraphs 1-66, inclusive, as if fully set forth herein.

80. As a result of the foregoing conduct, Defendants' acts violated Michael's civil rights in violation of The Civil Rights Act, 42 U.S.C. § 1983, in that they inflicted

cruel and unusual punishment upon Michael, in violation of the Eighth Amendment to the Constitution of the United States of America.

81. In particular, but without limitation, the use of the physical restraint technique, its excessive use, and the failure to provide proper medical care in connection with Michael's injuries constitute cruel and unusual punishment.

82. As a direct and proximate cause of the foregoing, Defendants caused Michael to be deprived of his civil rights, caused him great pain and suffering and, ultimately, caused his death.

83. The aforesaid acts were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with callous indifference to the health, safety, and civil rights of Michael, by reason of which Ibarra is entitled to an award of punitive damages.

84. Pursuant to 42 U.S.C. § 1988, Ibarra is entitled to recovery of attorney fees and costs.

WHEREFORE, Plaintiff, LINDA IBARRA, demands Judgment against Defendants, ECKERD YOUTH ALTERNATIVES, INC. and JOSEPH COOLEY, for compensatory and punitive damages, costs, a reasonable attorneys fee, and any other relief which the Court determines is appropriate.

**COUNT IV**  
**(Civil Rights; Cruel & Unusual Punishment Re**  
**Failure To Provide Psychotropic Medications)**

85. Ibarra hereby incorporates by reference the allegations contained in paragraphs 1-66, inclusive, as if fully set forth herein.

86. As a result of the foregoing conduct, Defendants' acts violated Michael's civil rights in violation of The Civil Rights Act, 42 U.S.C. § 1983, in that they inflicted cruel and unusual punishment upon Michael, in violation of the Eighth Amendment to the Constitution of the United States of America.

87. In particular, but without limitation, the failure to provide Michael the psychotropic medications that he needed constituted cruel and unusual punishment.

88. As a direct and proximate cause of the foregoing, Defendants caused Michael to be deprived of his civil rights, caused him great pain and suffering and, ultimately, caused his death.

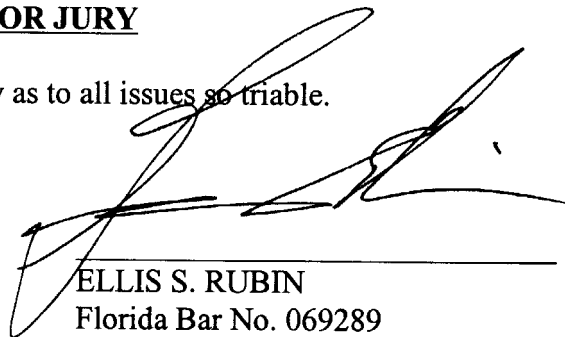
89. The aforesaid acts were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with callous indifference to the health, safety, and civil rights of Michael, by reason of which Ibarra is entitled to an award of punitive damages.

90. Pursuant to 42 U.S.C. § 1988, Ibarra is entitled to recovery of attorney fees and costs.

WHEREFORE, Plaintiff, LINDA IBARRA, demands Judgment against Defendants, ECKERD YOUTH ALTERNATIVES, INC. and JOSEPH COOLEY, for compensatory and punitive damages, costs, a reasonable attorneys fee, and any other relief which the Court determines is appropriate.

**DEMAND FOR JURY**

Plaintiff hereby demands a trial by jury as to all issues so triable.

A handwritten signature in black ink, appearing to read 'Ellis S. Rubin', is written over a horizontal line.

ELLIS S. RUBIN

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